IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1163 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
BHARWAD HAJI OKHA - Opponent(s)

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Appearance :
MR. KT. DAVE, ADDL. PUBLIC PROSECUTOR for Appellant(s) : 1,
MR PK SHUKLA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/06/2006

ORAL JUDGMENT

Heard ld. APP Mr. KT Dave for the appellant State and ld. Counsel Mr. P.K.Shukla for the respondent-accused.

The impugned judgment and order of acquittal passed by ld. Trial Judge, Banaskantha at Palanpur dated 06.03.1992 in Spl.Case No.113/1991 is under challenge in the present appeal filed by the State.

The ld. APP Mr. Dave has taken me through the facts of the case discussed by the ld. Trial Judge in paras 1 & 2 of the decision and the reasons assigned by the ld. Trial Judge for recording acquittal. It is the case of the prosecution that complainant Harijan Jalubhai Ukabhai was assaulted and insulted by the accused who belong to Bharwad community. The complainant when his son Karsan who was in the field of the complainant and was looking after the cultivation of cotton-seeds, crop of cumin, livestock i.e. Cattle of the accused entered the field of the complainant. Karsanbhai warned the accused and asked him to take away his cattle from the field as they were damaging the standing crop. So, there were hot exchange of words and in that hot exchange of words, the accused insulted Karsan and assaulted him and committed offences punishable under section 323, 504 etc of IPC. The complainant obviously intervened with a view to protect his son and at that time the

complainant was also threatened and accused addressed him with the name of the caste and threatened him telling what can he do being a member of a particular community. Ultimately, the complainant went to the police station and filed the complaint which has been considered as FIR by the ld. Trial Judge within the meaning of section 154 of CrPC.

The ld. Trial Judge has assigned detailed reasons for not accepting the version of the complainant as well as version of a minor boy examined by the prosecution. It is a settled legal position that the evidence of the witness of a tender age requires close scrutiny. It is pertinent to note that only interested witnesses have been examined. The ld. Trial Judge has assigned cogent and convincing reasons and no illegality or any perversity is found.

It is also pertinent to note that investigation is also not carried out by the DSP in compliance with Rule-7 framed under the Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act. Further, no formal caste certificate has been produced and/or any witness has been examined to prove that the persons

victimised belong to Schedule Caste or Schedule Tribe. These two grounds would be additional grounds for confirming the judgment and order of acquittal recorded by the ld. Trial Judge. The ld. Trial Judge must have noticed the demeanor of the witnesses and found that there is no strength in the case of the prosecution.

The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of **Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204**, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of **Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in the Criminal Appeal and

the same is required to be dismissed.

Hence, Criminal Appeal is dismissed. The impugned judgment and order of acquittal passed by the ld. Trial Judge, is hereby confirmed.

Ld. APP Mr. Dave has nothing to add.

[C.K. BUCH, J]

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